

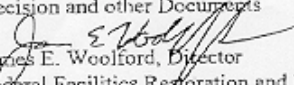


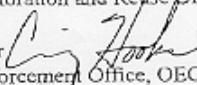
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 17 2001

MEMORANDUM

SUBJECT: EPA Concurrence/Approval of Federal Facility Proposed Plans and Records of Decision and other Documents

FROM:  James E. Woolford, Director
Federal Facilities Restoration and Reuse Office, OSWER

 Craig Hooks, Director
Federal Facilities Enforcement Office, OECA

TO: Superfund National Program Managers, Regions 1 - 10
Office of Regional Counsel, Regions 1-10

The purpose of this memorandum is to ensure that EPA Regions scrutinize all proposed plans, draft and final RODs, post-ROD documents which address institutional controls (ICs) to verify that they adequately document the objectives of the ICs, and clearly identify who has responsibility for implementation, monitoring, reporting and enforcement of the IC.

EPA has an obligation when signing or approving CERCLA decision documents to ensure that the remedies, including institutional controls (ICs) which are components of remedies, are protective and will remain so in the future. This responsibility is consistent with this Agency's obligation under CERCLA remedy-selection criteria established in the National Contingency Plan at 40 C.F.R. §300.430(e)(9)(iii), to assess the long-term reliability of ongoing remedial measures as part of evaluating a remedy's effectiveness in protecting public health and the environment.

The long term effectiveness of remedies, including ICs, is a high priority for EPA's federal facility program. Consequently, we are requesting Regions to take prompt action to ensure that, for Federal facilities, EPA Regions only approve decision documents which adequately document the means of ensuring the short and long-term effectiveness of ICs. Regions are directed to scrutinize all proposed plans, draft and final RODs, post ROD documents which address ICs, to ensure that they adequately document the objectives of the ICs, and clearly

identify who has responsibility for implementation, monitoring, reporting and enforcement of the ICs. Your review should ensure that EPA is provided a sufficient oversight role in the implementation and maintenance of the selected remedy and that the documents are consistent with CERCLA, the NCP, and EPA policy and guidance or that they provide an adequate justification to explain the variance.

If the Regional review finds an insufficient oversight role for EPA in the post-remedy implementation and maintenance of the IC or you make a determination that the remedy decision document is inconsistent with CERCLA, the National Contingency Plan or EPA policy and guidance, particularly with respect to the adequacy of the IC information, the Region should not approve the document under review. If the Region cannot reach an informal resolution of the issue, the Region should be prepared to follow the dispute resolution process outlined in the Federal Facility Agreement (FFA).

In the case of a remedy selection, the Region should be prepared to proceed to select the remedy as described in CERCLA Section 120(e)(4)(A) which provides for ultimate EPA selection of the remedy where the Region is unable to reach agreement on the selection of the remedial action. If there is no FFA in place, the Region should notify the federal agency of our dispute with the proposed remedy and indicate its intention to select the remedy within a certain time frame (such as 60 days) unless the decision document is modified to conform with our concerns. If the Region determines that it will not approve a decision document and intends to select the remedy, please notify both Allison Abernathy in FFRRO and Sally Dalzell in the Federal Facilities Enforcement Office (FFEO) via email of the facilities and the particular operable units where this situation arises and the specific reasons that a particular decision document is not acceptable. Please give no less than 48 hours notice.

We recognize that many of these decision documents represent targets in the Agency's Superfund Implementation Manual (SPIM) and Government Performance Reporting Act (GPRA) processes. We are prepared to make adjustments to your targets at the affected sites through the standard process for target changes.

As discussed at the July Federal Facilities Leadership Council (FFLC) meeting, we are requesting that during the August 29 FFLC call, the regions should be prepared to identify: 1) which upcoming RODs would likely be disapproved based on the IC issue (please be prepared to describe briefly the reason the ROD may not be acceptable) and any associated post-ROD issue; and 2) good candidate cases for the DoD post-ROD authority dispute. After the call, Regions will be requested to provide written descriptions no later than September 7, to FFRRO and FFEO. Should you identify any RODs which you are likely to disapprove *prior* to that August 29 call, please notify Jim Woolford *before* you inform the Federal agency so that headquarters can make any necessary preparations in the event of dispute elevation.

If you have questions on how to proceed, please contact Allison Abernathy in FFRRO at 202-260-9925 or Sally Dalzell in FFEO at 202-564-2583.

cc: Mike Shapiro, OSWER
Sylvia Lowrance, OECA
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Federal Facilities Leadership Council, Regions 1-10